

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
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Person To Contact:

Telephone Number:

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PLR-141519-07

Date:  
March 14, 2008

### Legend

Company A =

Company B =

Taxpayer A =

Taxpayer B =

Date A =

Date B =

Date C =

Date D =

Date E =

Date F =

Date G =

Amount A =

Amount B =

Amount C =

Amount D =

Amount E =

Dear :

This letter responds to your request, dated September 14, 2007, for a ruling on the Federal income tax consequences under section 83 of the Internal Revenue Code ("Code") regarding the imposition of vesting restrictions upon certain shares of common stock in Company B. The facts represented by Taxpayer A and Taxpayer B (collectively "Taxpayers") are as follows.

On Date A, Taxpayers incorporated Company A. At all times relevant hereto, Taxpayer A was President and Chief Executive Officer, and Taxpayer B was Chief Technical Officer and Secretary, of Company A. Taxpayers retained these positions in Company B following the merger described below.

On Date B, Taxpayers each purchased Amount A shares of Company A common stock ("Company A Common Stock") for Amount B per share. percent of this stock was substantially nonvested within the meaning of Code section 83. Taxpayers each timely filed an election under Code section 83(b) with respect to their nonvested stock. On Date C, in order to provide Company A with additional capital, Taxpayer A purchased Amount C shares of Company A preferred stock ("Company A Preferred Stock") for Amount D per share, and Taxpayer B purchased Amount E shares of Company A Preferred Stock for Amount D per share. The Company A Preferred Stock was convertible into common stock on a one-for-one basis. The Company A Preferred Stock was substantially vested within the meaning of Code section 83, and under the terms of the Company A Preferred Stock, any common stock received upon conversion thereof also would be substantially vested.

On Date D, Taxpayers incorporated Company B for the purpose of a future reincorporation of Company A into Company B. To facilitate an investment in Company B by certain venture capital funds ("Investors"), Taxpayers and Company B entered into, among other things, the following transactions.

On Date E, Company A executed an agreement and plan of merger, pursuant to which Company A would be merged with and into Company B in a reorganization described under Code section 368(a)(1)(F) ("Reincorporation"). Taxpayers represent that the Reincorporation satisfied the requirements of, and constituted a reorganization described under, Code section 368(a)(1)(F). Pursuant to the Reincorporation: (1) each share of substantially vested Company A Common Stock was exchanged for a substantially vested share of Company B's common stock ("Company B Common Stock"); (2) each share of substantially nonvested Company A Common Stock was exchanged for a substantially nonvested share of Company B Common Stock (with the substantially nonvested shares of Company B Common Stock remaining subject to the same vesting restrictions as applied with respect to the Company A Common Stock);

and (3) each share of substantially vested Company A Preferred Stock was exchanged for a substantially vested share of Company B's preferred stock ("Company B Preferred Stock"). The respective rights and preferences of Company B stock received in the Reincorporation were substantially identical to the respective rights and preferences of the Company A stock surrendered.

On Date F, Taxpayer A and Taxpayer B exercised their conversion rights with respect to approximately 91 percent of their respective shares of Company B Preferred Stock ("Conversions"). On Date G, Taxpayer A and Taxpayer B executed restriction agreements ("Restriction Agreements"), causing the Company B Common Stock to be substantially nonvested within the meaning of Code section 83 ("Restricted Company B Common Stock"). Neither Taxpayer A nor Taxpayer B filed an election under Code section 83(b) in connection with the imposition of vesting restrictions on their Company B Common Stock.

On Date G, the Investors and Company B completed a purchase and sale of Company B Preferred Stock. On Date G, Company B filed an Amended and Restated Certificate of Incorporation ("ARCI") which modified the rights, preferences, privileges and terms of the Company B Preferred Stock to provide for, among other things, a liquidation preference equal to the price per share the Investors paid for their Company B Preferred Stock.

Under Code section 83(a), if, in connection with the performance of services, property is transferred to any person other than the person for whom the services are performed, the excess of (1) the fair market value of the property (determined without regard to any restriction other than a nonlapse restriction) at the first time the rights of the person having the beneficial interest in the property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, over (2) the amount (if any) paid for the property, shall be included in the gross income of the person who performed the services in the first taxable year in which the rights of the person having the beneficial interest in the property are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable.

Section 1.83-1(a)(1) of the Income Tax Regulations ("Regulations") provides that property transferred in connection with the performance of services is not taxable under Code section 83(a) until it has been transferred to an employee or independent contractor and becomes substantially vested in such person.

Section 1.83-3(a)(1) of the Regulations provides that a transfer of property occurs when a person acquires a beneficial ownership interest in such property.

Section 1.83-3(b) of the Regulations provides that property is substantially nonvested when it is subject to a substantial risk of forfeiture and is nontransferable.

Property is substantially vested when it is either transferable or not subject to a substantial risk of forfeiture.

Rev. Rul. 2007-49, 2007-31 I.R.B. 237, sets forth the tax consequences under Code section 83 of imposing vesting restrictions on substantially vested stock. The revenue ruling addresses three situations: (1) the imposition of restrictions on substantially vested stock causing the stock to become substantially nonvested; (2) the exchange of substantially vested stock for substantially nonvested stock in a reorganization described in Code section 368(a); and (3) the exchange of substantially vested stock for substantially nonvested stock in a taxable stock acquisition. With respect to Situation 1, the revenue ruling concludes that there is no “transfer” under Code section 83 when restrictions are imposed on substantially vested stock causing the stock to become substantially nonvested. With respect to Situations 2 and 3, however, the revenue ruling concludes that the exchange of substantially vested stock for substantially nonvested stock in a reorganization under Code section 368(a) or a taxable stock acquisition constitutes a transfer of property subject to Code section 83.

Based on the facts represented by the Taxpayers, we rule that:

- (i) Taxpayers did not recognize income under Code section 83 as a result of the Conversions.
- (ii) The imposition of restrictions on the Company B Common Stock pursuant to the Restriction Agreements did not result in a transfer of substantially nonvested Company B Common Stock under Code section 83.

Except as specifically ruled on above, no opinion is expressed as to the Federal tax consequences of the transaction described above under any other provision of the Code. Specifically, no opinion is expressed as to the whether the transaction described above satisfies the requirements of Code section 368(a)(1)(F). In addition, no opinion is expressed regarding Federal tax consequences of the modifications described in the ARCI. This ruling is directed only to the taxpayer who requested it. Code section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Kenneth M. Griffin  
Senior Technician Reviewer  
Executive Compensation Branch  
Office of the Division Counsel/Associate Chief  
Counsel (Tax Exempt & Government Entities)